IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

WP(C).No. 3332 of 2007(V)

PETITIONER:

JITHENDRA PRASAD, B.TECH.,
ELECTRICAL & ELECTRONICS ENGINEERING,
COLLEGE OF ENGINEERING, COCHIN UNIVERSITY OF
SCIENCE & TECHNOLOGY, KUTTANAD.

BY ADV. SRI.P.CHANDRASEKHAR

RESPONDENTS:

COCHIN UNIVERSITY OF SCIENCE &
TECHNOLOGY, REPRESENTED BY ITS REGISTRAR,
KOCHI-682 022.

BY ADV. SRI.SUNIL CYRIAC, SC, COCHIN UNIVERSITY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

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W.P.(C).No.3332 of 2007

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Dated this the 30th day of July, 2007

J U D G M E N T

The petitioner is a student who obtained admission to the B.Tech. Course in the respondent University in the year 2005. After the petitioner completed three semesters of the course, the University issued Ext.P14 order stating that since the admission of the petitioner is cancelled as he was not eligible for admission. The reason for this order is that the petitioner did not have 50 per cent marks in the qualifying examination, which is a condition precedent for eligibility for admission to B.Tech. Course in the general category. The contention of the petitioner is that although he had obtained admission in the general category, Ext.P6 prospectus would make it clear that even in the general category, candidates belonging to Socially and Educationally Backward Class (SEBC) are eligible for concession in eligibility criteria in the sense that they are required to have only 45

percent marks for Mathematics and 45% for Mathematics, Physics and Chemistry put together, which the petitioner possesses.

2. The respondent University with the help of a counter affidavit filed strongly refutes this contention. According to them, the petitioner is an Other Backward Caste member from Bihar. Such persons are not entitled to any reservation or other benefits applicable to SEBC in Kerala. In Kerala they can only compete as general candidates and therefore, they should have the qualification prescribed for general category student. Therefore, the petitioner is not entitled to any relief in this writ petition, is the contention raised by the University. The University has no case that the petitioner has made any misrepresentation or false statement for obtaining admission. The petitioner claims that he has produced Ext.P2 certificate also, which, however, is disputed by the counsel for the University. Whatever that be, the fact remains that the petitioner was considered for admission on the basis of his disclosed marks and he was granted such admission. The relevant provision in Ext.P6 is the note attached to the

same, which reads:

> "Note: The minimum eligibility for SEBC candidates for admission to B.Tech. and Integrated M.Sc. Software Engineering Programmes is 45% for Mathematics and 45% for Mathematics, Physics and Chemistry put together in the qualifying examination. 50% of the total seats for B.Tech. (after excluding the 10% reservation of N.R.I.) are free seats. This allocation of seats which was applicable for the year 2004, is liable to be reviewed and the rules prevailing at the time of counselling/ admission will be applicable. Candidates under SEBC category, whose family income is more than Rs.2,50,000/- are not eligible for free seats under the respective community quota. Seats reserved under Sports quota will come under payment seats of B.Tech. Programmes. 50% concession in tuition fees will be granted to Physically Handicapped candidates admitted against the seats reserved for Physically Handicapped. Fees for the entire programme will be charged from students leaving the B.Tech. Programmes midway."

From a reading of the above, it cannot be said with any amount of certainty that this 45 per cent concession is applicable only those students who secured admission in the quota reserved for SEBC category. It is also not clear as to whether SEBC students from other States are not entitled to such concession in marks. That being so, it cannot be said with complete certainty that at the time when the petitioner was granted admission, his admission was irregular.

3. In any event, it is an admitted fact that at the time of issuing Ext.P14 the petitioner had already completed three semesters. Now he has completed 4th semester also. This court

has in several cases held that for such mistakes committed by the University, the candidates should not suffer. Some of the said decisions are as follows:

W.A.No.1040/03

> "Considering the facts and circumstances of th case, we find it unnecessary to consider the legal question. Since the appellant has already completed the course of study and has taken the examination, result will have to be declared. Therefore we accept the plea of the appellant and allow this appeal. Respondents would pass orders regularising his studies and would declare the results of the appellant. Appeal is allowed as above."

W.A.No.265/2003

> "After hearing learned counsel for the parties, we find that the respondent had been admittedly permitted to appear in the test. Surely, if the authority thought that the respondent was not eligible, it should have declined him permission to take the test. Once he was permitted to appear, there appears to be no justification for the action of the authority in withholding the result."

AIR 1976 SC 376 (*Shri Krishnan v. Kurukshetra University*)

> "Once a candidate is allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the candidate cannot be refused admission subsequently, for any infirmity which should have been looked into before giving the candidate permission to appear."

In view of these binding decisions, I am of opinion that the petitioner cannot now be denied admission on the grounds mentioned in Ext.P14. In the above circumstances, in so far as the petitioner is concerned I quash Ext.P14 and direct the

University to treat the petitioner's admission as regular and to permit the petitioner to complete the course as a regularly admitted student.

Writ petition is allowed as above.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.